



ENVIRONMENTAL STATEMENT – VOLUME 3 – APPENDIX 9.1

National and Local Legislation and Policy Review

Drax Bioenergy with Carbon Capture and Storage

The Planning Act 2008

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 – Regulation 5(2)(a)

Document Reference Number: 6.3.9.1

Applicant: Drax Power Limited

PINS Reference: EN010120



REVISION: 01

DATE: May 2022

DOCUMENT OWNER: WSP UK Limited

AUTHOR: S. Lewis

APPROVER: P. Nicholson

PUBLIC

TABLE OF CONTENTS

1. NATIONAL AND LOCAL LEGISLATION AND POLICY REVIEW	1
1.1. Introduction	1
1.2. Legislation	1
1.3. Policy	2
REFERENCES	11

1. NATIONAL AND LOCAL LEGISLATION AND POLICY REVIEW

1.1. INTRODUCTION

- 1.1.1. Legislation and policies / strategies and guidance of relevance to the LVIA at a national and local level are summarised below.

1.2. LEGISLATION

EUROPEAN LANDSCAPE CONVENTION

- 1.2.1. The UK is a signatory to the European Landscape Convention (ELC) (Council of Europe, 2000) which was ratified in 2006 and became binding in the UK from 1 March 2007. The ELC requires “*landscape to be integrated into regional and town planning policies and in cultural, environmental, agricultural, social and economic policies, as well as any other policies with possible direct or indirect impacts on landscape*”. It also acknowledges that all landscapes can be important, whether or not they are designated.
- 1.2.2. There is no legislation specifically covering landscape character or visual amenity but the spirit of the ELC is carried through in planning policy and government guidance.

ENVIRONMENT ACT 2021

- 1.2.3. The Environmental Act 2021 (Department for Environmental, Food and Rural Affairs, 2021) is a wide-ranging piece of legislation which is designed to help improve the natural environment. Of key relevance to the Scheme is the introduction of Biodiversity Net Gain (BNG) requirements NSIP development in England. These provisions of the Environment Act 2021 are not yet in force, but the Applicant expects to comply with the spirit of them.

COUNTRYSIDE AND RIGHTS OF WAY ACT, 2000

- 1.2.4. The Countryside and Rights of Way Act, (HM Government, 2000) provides a statutory framework for protected landscapes and introduced an additional right of access requiring the identification of “open access land”.

HEDGEROW REGULATIONS, 1997

- 1.2.5. The Hedgerows Regulations (1997) make provision for the protection of important hedgerows in England and Wales. The regulations affect hedgerows which are 20m or more in length or connected at both ends to another hedgerow of any length.
- 1.2.6. They relate to hedgerows which are on, or adjoining land used for agriculture and/or conservation purposes. They do not include hedges that are attached to or marking the boundaries of a private dwelling. Details of the hedgerow habitats are set out within **Chapter 8 (Ecology)** of this ES (document reference 6.1.8).

1.3. POLICY

PLANNING POLICY - NATIONAL

National Planning Statements

NPS for Overarching Energy (EN-1)

- 1.3.1. The Overarching National Planning Policy Statement for Energy ('EN-1') (Department for Energy and Climate Change, 2011) includes a number of statements of relevance to the landscape including green infrastructure ('GI') and visual impacts of energy infrastructure in general.
- 1.3.2. Section 4.5 of EN-1 sets out the criteria for good design for energy infrastructure projects, which states "*The visual appearance of a building is sometimes considered to be the most important factor in good design..... Applying "good design" to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.*"
- 1.3.3. Section 5.9 of EN-1 sets out the requirements for assessing and mitigating the landscape and visual impacts of proposed NSIPs.
- 1.3.4. Paragraph 5.9.5 provides "*The landscape and visual assessment should include references to any landscape character assessment and associated studies as a means of assessing landscape impacts relevant to the proposed project. The applicant's assessment should also take into account of any relevant policies based on these assessments in local development documents in England and local development plans in Wales.*"
- 1.3.5. Paragraph 5.9.6 provides that the "*assessment should include the effects during construction of the project and the effects of the completed development and its operation on landscape components and landscape character*".
- 1.3.6. Further, paragraph 5.9.7 provides "*The assessment should include the visibility and conspicuousness of the project during construction and of the presence and operation of the project and potential impacts on views and visual amenity. This should include light pollution effects, including on local amenity, and nature conservation*".
- 1.3.7. Paragraph 5.9.8 importantly recognises that "*Virtually all nationally significant infrastructure projects will have effects on the landscape.*" In light of this fact, the paragraph goes on to provide "*Projects need to be designed carefully, taking into account the potential impact on the landscape. Having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate*".

- 1.3.8. Paragraph 5.9.14, relates to local landscapes of value, *“Where a local development document in England or a local development plan in Wales has policies based on landscape character assessment, these should be paid particular attention. However, local landscape designations should be used in themselves to refuse consent, as this may unduly restrict acceptable development.”*
- 1.3.9. Paragraphs 5.9.15, which relate to developments outside of nationally designated areas, provides that *“The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The IPC [now the Secretary of State] should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project.”*
- 1.3.10. Further, paragraph 5.9.16 provides that *“In reaching a judgement, the IPC [Secretary of State] should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the IPC [Secretary of State] considers reasonable.”* Further to the acknowledgement at paragraph 5.9.8 explained above, paragraph 5.9.18 provides *“All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The IPC [Secretary of State] will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project.”*
- 1.3.11. In terms of the siting of development paragraph 5.9.17 states *“The IPC should consider whether the project has been designed carefully, taking account of environmental effects on the landscape and siting, operational and other constraints, to minimise harm to the landscape, including by reasonable mitigation.”*
- 1.3.12. In respect of the mitigation of landscape and visual amenity impacts, paragraph 5.9.21 provides *“reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing scale or otherwise amending design of a proposed energy infrastructure project may result in significant operational constraint and reduction in function”.*
- 1.3.13. Further in this regard paragraph 5.9.22 of EN-1 adds: *“Within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration.”*
- 1.3.14. Lastly, paragraph 5.9.23 provides that *“Depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site. For example, filling in gaps in existing tree and hedge lines would mitigate the impact when viewed from a more distant vista.”*
- 1.3.15. The above provides a reasonably detailed overview of the relevant policies within EN-1 regarding the consideration of the landscape and visual impacts of a nationally

significant energy infrastructure project. As this is the principal policy document on which the landscape and visual impacts of the Proposed Development will be considered those relevant policies have been taken into account when considering its impacts.

- 1.3.16. Section 5.10 of EN-1 establishes the requirements for identifying and mitigating impacts of energy infrastructure projects on open space (including green infrastructure).
- 1.3.17. Paragraph 5.10.1 of EN-1 provides: *“An energy infrastructure project will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development. Given the likely locations of energy infrastructure projects there may be particular effects on open space including green infrastructure.”*
- 1.3.18. Where green infrastructure is affected, the Secretary of State should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained in the vicinity of the development and that any necessary works are undertaken, where possible, to mitigate any adverse impact.

Draft Overarching National Policy Statement for Energy (EN-1)

- 1.3.19. The Draft Overarching National Policy Statement for Energy (EN-1) (Department for Business, Energy and Industrial Strategy, 2021) includes a number of statements of relevance to the landscape including green infrastructure and visual impacts of energy infrastructure.
- 1.3.20. Section 4.6 sets out the criteria for good design for energy infrastructure. Paragraph 4.6.1 states that: *“Applying “good design” to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible.”*
- 1.3.21. Paragraph 4.6.2 sets out that *“Given the benefits of “good design” in mitigating the adverse impacts of a project, applicants should consider how “good design” can be applied to a project during the early stages of the project lifecycle. Design principles should be established from the outset of the project to guide the development from conception to operation.”*
- 1.3.22. Section 5.10 sets out the requirements for assessing and mitigating landscape and visual impacts of proposed NSIPs, in line with the current EN-1 NPS.
- 1.3.23. Further, paragraph 5.10.10 provides *“Applicants should consider how landscapes can be enhanced using landscape management plans, as this will help to enhance environmental assets where they contribute to landscape and townscape quality.”*
- 1.3.24. With regard to development outside of nationally designated areas, which the Proposed Development is, the NPS confirms, at paragraph 5.10.14, the duty to have regard to nationally designated areas also applies and that *“the aim should be to avoid compromising the purposes of the designation and such projects should be*

designed sensitively given the various siting, operational and other relevant constraints".

- 1.3.25. In addition, consideration should be given to the impact on nationally designated areas where proposals lie outside the boundaries of protected landscapes as well as highly valued landscapes which are protected by a local designation.
- 1.3.26. Paragraphs 5.10.17, which relate to developments outside of nationally designated areas, provides that *"The scale of such projects means that they will often be visible within many miles of the site of the proposed infrastructure. The Secretary of State should judge whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project."*
- 1.3.27. Further, paragraph 5.10.18 provides that *"In reaching a judgement, the Secretary of State should consider whether any adverse impact is temporary, such as during construction, and/or whether any adverse impact on the landscape will be capable of being reversed in a timescale that the Secretary of State considers reasonable."* Further to the acknowledgement at paragraph 5.10.8 explained above, paragraph 5.10.20 provides *"All proposed energy infrastructure is likely to have visual effects for many receptors around proposed sites. The Secretary of State will have to judge whether the visual effects on sensitive receptors, such as local residents, and other receptors, such as visitors to the local area, outweigh the benefits of the project."*
- 1.3.28. Paragraph 5.10.21 states *"It may be helpful for applicants to draw attention, in the supporting evidence to their applications, to any examples of existing permitted infrastructure they are aware of with a similar magnitude of impact on sensitive receptors. This may assist the Secretary of State in judging the weight they should give to the assessed visual impacts of the proposed development."*
- 1.3.29. Paragraph 5.10.22 discusses the implications of an increase in plume coverage, it is not anticipated that any new plumes will be introduced as part of the Proposed Scheme.
- 1.3.30. In respect of the mitigation of landscape and visual amenity impacts, paragraph 5.10.23 provides *"reducing the scale of a project can help to mitigate the visual and landscape effects of a proposed project. However, reducing scale or otherwise amending design of a proposed energy infrastructure project may result in significant operational constraint and reduction in function"*.
- 1.3.31. Further in this regard paragraph 5.10.24 of EN-1 adds: *"Within a defined site, adverse landscape and visual effects may be minimised through appropriate siting of infrastructure within that site, design including colours and materials, and landscaping schemes, depending on the size and type of the proposed project. Materials and designs of buildings should always be given careful consideration."*
- 1.3.32. Lastly, paragraph 5.10.25 provides that *"Depending on the topography of the surrounding terrain and areas of population it may be appropriate to undertake landscaping off site. For example, filling in gaps in existing tree and hedge lines would mitigate the impact when viewed from a more distant vista."*

- 1.3.33. The above provides a reasonably detailed overview of the relevant policies within EN-1 regarding the consideration of the landscape and visual impacts of a nationally significant energy infrastructure project, however as this is the principal policy document on which the landscape and visual impacts of the Proposed Development will be considered those relevant policies have been taken into account when considering its impacts.
- 1.3.34. Section 5.11 of EN-1 establishes the requirements for identifying and mitigating impacts of energy infrastructure projects on open space (including green infrastructure).
- 1.3.35. Paragraph 5.11.1 of EN-1 provides: *“An energy infrastructure project will have direct effects on the existing use of the proposed site and may have indirect effects on the use, or planned use, of land in the vicinity for other types of development. Given the likely locations of energy infrastructure projects there may be particular effects on open space including green infrastructure.”*
- 1.3.36. Where green infrastructure is affected, the Secretary of State should consider imposing requirements to ensure the connectivity of the green infrastructure network is maintained in the vicinity of the development and that any necessary works are undertaken, where possible, to mitigate any adverse impact.

The Revised National Planning Policy Framework, 2018 and updated July 2021

- 1.3.37. Whilst it does not contain specific policies for nationally significant infrastructure projects, the revised NPPF (Ministry of Housing, Communities and Local Government, 2018 and updated 2021) may be considered to contain matters that are relevant to the determination of NSIP's. It is therefore appropriate to consider relevant policies therein contained to the assessment of the landscape and visual impacts of the Proposed Development.
- 1.3.38. Within Section 12 of the NPPF *“Achieving well-designed places”* the Government sets out a number of overriding core planning principles for achieving well designed places. Of relevance to the consideration of impacts on the landscape and how LPA's are engaged with during the design process, paragraph 132 provides, *“Design quality should be considered throughout the evolution and assessment of individual proposals. Early discussion between applicants, the local planning authority and local community about the design and style of emerging schemes is important for clarifying expectations and reconciling local and commercial interests. Applicants should work closely with those affected by their proposals to evolve designs that take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot.”*
- 1.3.39. Paragraph 174 contained within Chapter 15 *“Conserving and enhancing the natural environment”* sets out how planning policies and decisions should contribute to and enhance the natural and local environment. Of relevance to the consideration of landscape and visual amenity impacts, this includes by:

- a. *“protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality); and*
- b. *recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.”*

1.3.40. Paragraph 175 refers to the need to distinguish between a hierarchy of designated sites, the need to take a strategic approach to maintain and enhancing networks of habitats and green infrastructure and plan for the enhancement of natural capital at a catchment or landscape scale across local authority administrative boundaries.

PLANNING POLICY - LOCAL

1.3.41. The 3km study area spans three Local Planning Authority (LPA) areas: North Yorkshire County Council, Selby District Council and East Riding of Yorkshire Council.

1.3.42. Policies of relevance in landscape and visual terms to the Proposed Development are as follows:

Selby District Council

1.3.43. Selby District Core Strategy Local Plan (Selby District Council, 2013):

- a. Policy S15 seeks to promote sustainable development and encourages developments to consider tree planting, new woodlands and hedgerows in landscaping schemes to create habitats, reduce the urban heat island effect and to offset carbon loss.
- b. Policy SP 18 requires the safeguarding and, where possible, enhancement of the historic and natural environment including landscape character of the area and settings of areas of acknowledged importance. Specific reference is made to increasing connectivity to the District’s green infrastructure promoting opportunities to increase its multi functionality and the need to identify, protect and enhance locally distinctive landscapes, areas of tranquillity, public rights of way and access, and open spaces.
- c. Policy SP 19 requires high quality design that has regard to local character and incorporates new and/ or existing landscaping and access to open space and green infrastructure.

1.3.44. Selby District Local Plan Direction regarding “Saved Policies” (Selby District Council, 2008):

- Policy ENV 1 sets out the considerations required in relation to new development including impacts on the character of the area, standard of layout and design including materials and landscaping schemes.
- Policy ENV15 states that priority will be given to the conservation and enhancement of the character and quality of the landscape within locally

important landscape areas. (Vale of York, Southern Magnesian Limestone and the Humberhead Levels). The supporting text makes specific mention to Hambleton Hough and Brayton Barff, both landscape features worthy of local recognition, located to the south west of Selby and within the Study Area (para 4.103 of Selby District Local Plan).

- Policy ENV 21 provides guidance on the requirements of landscape schemes in relation to development to ensure that the retention, replacement and planting of trees has been appropriately considered.
- Policy EMP 10 states that no additional industrial / business related development should be permitted at Drax Power Station if it results in significant adverse effect on residential amenity in nearby settlements. Proposals would have to be related to the existing development and integrated into its surroundings through mounding, off site planting and should not harm nature conservation or sites of archaeological importance.

1.3.45. Selby District Council is in the process of reviewing consultations on its Local Plan Preferred Options with the intention of issuing a publication version for consultation early 2022 and submission for Examination in 2023. On this basis that this document has yet to be adopted, the LVIA has not assessed the implications of emerging policy on the Proposed Scheme.

East Riding of Yorkshire Council

1.3.46. The East Riding Local Plan was adopted in April 2016 (East Riding District Council, 2016).

1.3.47. Specific policies of relevance to the Proposed Scheme and the Study Area are as follows:

- a. Policy EC5 Supporting the Energy Sector states that proposals will be supported where any significant adverse impacts can be addressed, and the residual harm outweighs proposals. Due consideration should be given to cumulative effects of other proposals, Important Landscape Areas, local amenity including noise, traffic and visual impacts and biodiversity, geodiversity and nature.
- b. Policy ENV1 Integrating High Quality Design seeks to ensure that the diverse character and appearance of the area is safeguarded and respected considering the specific characteristic of the sites wider context and surrounding area. Proposals should be of an appropriate scale, density, massing, height and materials and incorporate hard and/or soft landscaping alongside boundary treatments to enhance the setting of the building, public space and views.
- c. Policy ENV2 Promoting a High-Quality Landscape states that due consideration should be given to how the proposed development integrates into the landscape respecting intrinsic landscape qualities of the landscape setting and where possible opportunities to restore and enhance landscape characteristics and features. The policy adds that proposals should respect and enhance existing landscape character in the Landscape Character Assessment and in particular

Important Landscape Areas including the Lower Derwent Valley and the Thorne, Crowle and Goole Moors which lie within the Study Area.

- d.** Policy ENV3 Valuing Our Heritage states that the significance, views, setting, character and context of heritage assets should be conserved. This includes the landscape setting of Conservation Areas; their open spaces, key views and vistas, the setting of Listed Buildings and Historic Parks and Gardens including key views in and out of these landscapes.
- e.** Policy ENV4 Conserving and Enhancing Biodiversity and Geodiversity seeks to optimise opportunities to enhance biodiversity through promoting and enhancing green infrastructure and protecting, strengthening and reducing fragmentation.
- f.** Policy ENV5 Strengthening Green Infrastructure states that development proposals should seek to integrate existing and/or new green infrastructure features within their design and enhance their functionality and connectivity.

LOCAL STRATEGIES / PARTNERSHIPS

Leeds City Region Green Infrastructure Strategy

- 1.3.48. Leeds City Region Green Infrastructure Strategy (Leeds City Region Enterprise Partnership, 2018) was prepared by the Leeds City Region Enterprise Partnership and seeks to expand green infrastructure to enable everyone within the region to be *“within easy access to an outstanding and well used network of green infrastructure that reduces flood risks and supports health, the economic, the environment and a superb quality of life.”*
- 1.3.49. The document identifies seven headline Outcomes, including:
 - a.** “Become a UK trailblazer in catchment planning and natural flood management.
 - b.** Make quality green infrastructure a defining feature of the way the City Region does development. 1,000 miles of green infrastructure rich corridors, including canals, rail, road, and a City Region cycle route network.
 - c.** Everybody within easy reach (1km) of an outstanding, diverse, well used green infrastructure network.
 - d.** Create a White Rose Forest and increase tree cover by a third.”
- 1.3.50. The Strategy covers all of the Leeds City Region and seeks to make connections to areas beyond which impact upon it, for instance river catchments. Linked to this core purpose are five interconnected aims:
 - a.** Quality place (for people and investment);
 - b.** Health and wellbeing;
 - c.** Flood risk reduction;
 - d.** Wildlife and habitats; and
 - e.** Climate change, air and water quality.
- 1.3.51. Seven priority areas have been identified where “tangible and impactful action can be delivered” through a detailed Delivery Plan. The Strategy goes on to state that all

priorities are interconnected, and each priority will deliver multiple benefits as well as contributing to the above aims. Priorities include:

- a.** Effective water management and flood risk reduction;
- b.** Build green and blue infrastructure into physical development and housing;
- c.** Enhance green and blue corridors and networks;
- d.** Heighten community access to / enjoyment of green and blue infrastructure;
- e.** Plant and manage more trees and woodlands;
- f.** Restore the uplands and manage them sustainably; and
- g.** Business growth, jobs, skills, and education.

Dales to Vales Rivers Network Catchment Partnership

- 1.3.52. The Dales to Vales River Network (DVRN) is a catchment partnership which brings together local people, communities, organisations and businesses to make decisions on managing the rivers, becks and lakes in the Swale, Ure, Nidd, Ouse and Wharf Catchment. The network has highlighted a number of issues which need addressing including water quality, enhancing biodiversity, heavy metals and flooding,
- 1.3.53. The Proposed Scheme lies within the Ouse Catchment Management Plan (Dales to Vales River Network Catchment Partnership, 2013). Plans which accompany the Catchment Management Plan indicate the extent of existing “green areas” in terms of woodland / forestry and areas of “*floodplain woodland potential*” and “*riparian woodland potential*”. The Plans highlight the importance of the area in terms of shading and fluvial flooding. The former, through riparian trees, can provide shading for aquatic species, whilst fluvial flooding can be impeded through the introduction of more wetland woodland habitat to store water.

REFERENCES

- Council of Europe. (2000). European Landscape Convention.
- Dales to Vales River Network Catchment Partnership. (<http://dvrn.co.uk>).
- Department for Energy and Climate Change (DECC). (2011). *National Policy Statement for Energy (EN-1)*. DECC.
- Department for Energy and Climate Change. (2011). Overarching National Policy Statement for Energy (EN-1).
- Department for Environment, Food and Rural Affairs. (2020). *Environment Bill*. Department for Environment, Food and Rural Affairs.
- Department of Energy and Climate Change. (2011). National Policy Statement for Fossil Fuel Electricity Generating Infrastructure (EN-2).
- Department of Energy and Climate Change. (2011). National Policy Statement for Gas Supply Infrastructure and Gas and Oil Pipelines (EN-4).
- Doncaster Metropolitan Borough Council. (2011). Doncaster Core Strategy 2011-2028.
- East Riding District Council. (2016). East Riding of Yorkshire Local Plan 2012-2029 Strategy Document .
- HM Government. (2000). Countryside and Rights of Way Act.
- Leeds City Region Enterprise Partnership. (2010). *Leeds City Region Green Infrastructure Strategy*. Leeds City Region Partnership.
- Leeds City Region Enterprise Partnership. (2018). Leeds City Regional Green Infrastructure Strategy 2017-2036 - Version Draft Final.
- Ministry of Housing, Communities and Local Government. (2018 and updated 2021). Revised National Planning Policy Framework.
- Secretary of State for the Environment and Minister of Agriculture, Fisheries and Food. (1997). The Hedgerow Regulations (SI 1997 / No 1160).
- Selby District Council. (2008). Saved Policies Direction Letter.
- Selby District Council. (2013). Selby District Local Plan Core Strategy adopted.
- The Secretary of State for the Environment and the Minister of Agriculture, Fisheries and Food. (1997). *The Hedgerows Regulations 1997*. Legislation.gov.uk.